

## REMARKS

In view of the above amendments and the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 32-33, 36-38 and 43-52, the only claims pending and currently under examination in this application.

Claims 32 and 38 have been amended. Support for the amendment of Claim 32 is found in the claims as originally filed, as well as in the specification at, for example, Figure 5, page 17, lines 15-22, and original Claim 35. Claim 38 has been amended to address the objection raised by the Examiner. New Claims 42-52 have been added. Support for new Claims 42-52 is found in the claims as originally filed, as well as in the specification at, for example, Figure 5, and the accompanying description thereof in the specification beginning on page 15. No new matter has been added. Applicants respectfully request reconsideration of the application in view of the remarks made herein.

### Claim Objection

Claim 38 was objected because of a typographical error. Claim 38 has been amended to address the objection raised by the Examiner. Withdrawal of this objection is respectfully requested.

### Rejections under 35 U.S.C. § 102(b)

Claims 32-33 and 37 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,837,475 to Dorsel et al. (hereinafter '475 patent). This rejection is respectfully traversed.

Without conceding to the correctness of this rejection, Claim 32 has been amended to clarify that the apparatus includes an adjustable detection angle detector system that includes more than one detector.

In contrast, the '475 patent discloses an apparatus for interrogating an array, which includes a detector system with a fixed detection angle (see column 3, lines 20-42). Nowhere in the '475 patent is there disclosed an apparatus that includes a detector system with an adjustable detection angle.

It is well established that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987), cert. denied, 481 U.S. 1052 (1987). See also, Scripps Clinic and Research Foundation v. Genentech, Inc., 18 USPQ 2d 1001 (Fed. Cir. 1991).

Since the disclosed apparatus of the '475 patent is limited to an apparatus that has a fixed detection angle detector system, the '475 patent fails to disclose each and every element of the claimed invention. Since dependent Claims 33 and 37 incorporate all the elements of Claim 32, the '475 patent also fails to disclose each and every element of Claims 33 and 37.

Accordingly, Claims 32-33 and 37 are not anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,837,475 and this rejection may be withdrawn.

#### **Rejections under 35 U.S.C. § 102(e)**

Claims 32-38 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,406,849 to Dorsel et al. (hereinafter '849 patent). This rejection is respectfully traversed.

#### ***Claims 32-37***

As noted above, the presently claimed invention is directed to an apparatus that includes a detector system with an adjustable detection angle.

Nowhere does the '849 patent disclose an apparatus that includes a detector system that has an adjustable detection angle, be the adjustability provided by having more than one detector or a movable detector. Instead, the detector system disclosed in the '849 patent has a fixed detection angle.

Since the disclosed apparatus of the '849 patent is limited to an apparatus having a detector system with a fixed detection angle, a **single** optical axis instead of **multiple detectors** each having a different optical axis, as recited in amended independent Claim 32, the '849 patent fails to disclose each and every element of the claimed invention. Since dependent Claims 33 and 37 incorporate all the elements of Claim 32, the '849 patent also fails to disclose each and every element of Claims 33 and 37.

Accordingly, Claims 32-33 and 37 are not anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 6,406,849 and this rejection may be withdrawn.

***Claim 38***

The Office Action notes that the '849 patent teaches an apparatus that includes a housing, a detector system and a processor which receives signal from the detector system and correlates the received signals with respective array features.

However, the presently claimed apparatus includes a detector system which can collect light at multiple different positions around a cone and a processor which receives the signals from the detector system.

In contrast, the '849 patent discloses an apparatus for interrogating an array, which includes a **stationary** detector with a fixed detection angle (see column 8, lines 2-10). Therefore, the disclosed detector of the '849 does not collect light "at multiple different positions around a cone" as recited in Claim 38 of the present application.

Accordingly, the Applicant submits that the rejection of Claims 32-38 under 35 U.S.C. § 102(e) has been adequately addressed in view of the amendments to the claims and remarks set forth above. Therefore, the Examiner is respectfully requested to withdraw the rejection and allow the application to proceed to issue.

**CONCLUSION**

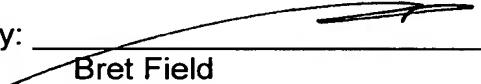
Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-1078.

Respectfully submitted,  
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Date: 2/4/04

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